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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/486,821	03/02/2000	ANTTI TOSKALA	PM257637	1198

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EXAMINER

NGUYEN, BRIAN D

ART UNIT PAPER NUMBER

2661

DATE MAILED: 08/04/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/486,821

Applicant(s)

TOSKALA ET AL

Examiner

Brian D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the amendment filed 5/17/04.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-15, 17-40, and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allpress et al (5,920,552) or Sato (6,130,884).

Regarding claims 1-15 and 17-25, Allpress and Sato disclose a method for transmitting data from a radio network subsystem to user equipment comprising transmitting a dedicated control channel and a dedicated traffic channel of variable data rate to the user equipment, the spreading code used to spread the traffic channel is changed according to the required data transmission rate, wherein the control channel and traffic channel frames associated with each other are transmitted on the same frequency, spread with a different spreading code, and separated by one frame length at most (see abstract; col. 3, line 66-col. 4, line 3; and col. 6, lines 9-16 of Allpress) (see abstract; col. 1, lines 5-12; and col. 4, lines 16-28 of Sato). Allpress and Sato do not specifically disclose each control channel frame indicates the spreading code with which the corresponding traffic channel frame is spread when transmitted, wherein the control channel frame comprises a transport format indicator. However, control channel frame indicates the spreading code with which the corresponding traffic channel frame is spread when transmitted is well known in the art. In addition, because the data rate of Allpress and Sato are variable, it is inherent that the control channel in these systems will indicate the spreading code

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which the corresponding traffic channel frame is spread when transmitted. Therefore, it would have been obvious to those of ordinary skill in the art at the time the invention was made to indicate the spreading code in each control channel frame, as it is well known, in the system of Allpress or Sato so that the user equipment can use the spreading code to decode the received signals.

Regarding claims 26-40 and 42-50, claims 26-40 and 42-50 are system claims that have substantially all the limitations of the respective method claims 1-15 and 17-25, thus is subject to the same rejection.

Regarding claims 51-56, claims 51-56 are user equipment claims that have substantially all the limitations of the respective method claims 1-15 and 17-25, thus is subject to the same rejection.

3. Claims 16 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allpress et al (5,920,552) or Sato (6,130,884) in view of Ovesjo et al (6,542,484).

Regarding claims 16 and 41, Allpress and Sato disclose all the claimed subject matter as described in previous paragraph except for when the sub-code tree becomes congested, the user equipment can be transferred to another sub-code tree. However, Ovesjo discloses when the sub-code tree becomes congested (run out of code), the user equipment can be transferred to another sub-code tree (use code from the second code set) (see col. 3, lines 47-58 and col. 5, lines 33-36). Therefore, it would have been obvious to those of ordinary skill in the art at the time the invention was made to transfer the user equipment to another sub-code tree as taught by Ovesjo in the system of Allpress or Sato so that service disruption can be avoided when congestion occurs.

Response to Arguments

4. Applicant's arguments filed 5/17/04 have been fully considered but they are not persuasive.

The applicant argued that Longoni does not qualify as prior art. For at least this reason, the applicant respectfully submits that the Office Action has failed to set forth a prima facie case of obviousness. The examiner agrees that Longoni does not qualify as prior art. However, because the features of indicating the spreading code with which the corresponding traffic channel frame is spread when transmitted as disclosed in Longoni and mentioned in the Office Action as well known in the art, the prima facie case of obviousness can be established without the Longoni reference. For example, at least one of the prior art of record, Stewart et al (6,009,091), col. 1, lines 45-47, disclose these well known features of indicating the spreading code with which the corresponding traffic channel frame is spread when transmitted. In addition, because both Allpress and Sato discloses the use of variable transmission rate, it is inherent that the control channel in these systems will indicate the spreading code which the corresponding traffic channel frame is spread when transmitted; otherwise, the receiver will not be able to decode the received data because the receiver do not know what coding is used for encoding data at the transmission site.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (703) 305-5133. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms can be reached on (703) 305-4703. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



8/3/04

BRIAN NGUYEN
PRIMARY EXAMINER